

**REMARKS**

This communication is responsive to the Examiner's Report mailed 6 July 2009, as extended, where applicable, under 37 C.F.R. § 1.136(a) by payment of appropriate extension of time fees.

Prior to this paper, claims 1-7, 12-17, 20, 22-32, 34-40, 47-59 were pending.

In this paper the Applicant has amended claims 1, 47-49 and 56. These amendments are submitted to be completely supported by the application as originally filed and to add no new matter.

In this paper, the Applicant has also withdrawn claims 15, 17, 20, 29, 31, 32, 34-40 and 47-49, subject to the rejoinder requests described in more detail below.

**Amendments to Claims 1 and 56**

The Applicant has made amendments of a typographical nature to claims 1 and 56. These amendments are submitted to be completely supported by the application as filed and not to change the scope of claims 1 and 56.

**Response to Restriction Requirement**

The Applicant elects invention I (including claims 1-7, 12-17, 20, 22-32, 34-40, 50-59) as identified by the Examiner in the 6 July 2009 Office Action without traverse.

Claims 47-49 (which are directed toward invention II) are hereby withdrawn, subject to the rejoinder request presented below.

**Amendments to Claims 47-49 – Rejoinder Request**

The Examiner correctly notes that the elected invention I and the withdrawn invention II are related as product/process. The Applicant has amended withdrawn process claim 47 to incorporate all of the features of independent product claim 1. Claims 48 and 49 have been

amended to be congruent with the amendments to claim 47. These amendments are submitted to be completely supported by the application as filed and to add no new matter.

Claim 1 (of invention I) is submitted to patentably distinguish the prior art of record for at least the reasons discussed in the Applicant's previous response. Since invention I and invention II are related as product/process and the invention II process claims have been amended to incorporate all of the features of the invention I product (claim 1), the Applicant hereby requests rejoinder of the withdrawn invention II claims 47-49.

### **Response to Species Election**

The Applicant thanks the Examiner for the courtesy extended in attempting to clarify the species election requirement during the 5 August 2009 telephone conference between the Examiner and the Applicant's agent.

### **Election of Track Species**

As discussed in the 5 August 2009 telephone conference between the Examiner and the Applicant's agent, the specification describes a number of species of track. These track species include the following:

- Species A – Figures 2, 3A-3D, 8A and 8B show a particular embodiment of a deformable track which may be used in a construction framing system wherein Figures 3A-3D show this track embodiment in various states of deformation;
- Species B – Figures 4A-4D show another embodiment of a deformable track which may be used in a construction framing system in various states of deformation;
- Species C – Figure 11 shows another embodiment of a deformable track which may be used in a construction framing system;
- Species D – Figure 12 shows another embodiment of a deformable track which may be used in a construction framing system;
- Species E – Figure 13A shows another embodiment of a deformable track which may be used in a construction framing system;
- Species F – Figure 13B shows another embodiment of a deformable track which may be used in a construction framing system;

- Species G – Figure 14A shows another embodiment of a deformable track which may be used in a construction framing system;
- Species H – Figure 14B shows another embodiment of a deformable track which may be used in a construction framing system;
- Species I – Figure 14C shows another embodiment of a deformable track which may be used in a construction framing system;
- Species J – Figure 14D shows another embodiment of a deformable track which may be used in a construction framing system;
- Species K – Figure 14E shows another embodiment of a deformable track which may be used in a construction framing system; and
- Species L – Figure 14F shows another embodiment of a deformable track which may be used in a construction framing system.

The Applicant hereby elects the species A track (i.e. the embodiment of the track shown in Figures 2, 3A-3D, 8A and 8B) without traverse. Claims 1-7, 12-14, 16, 22-30 and 47-59 are submitted to read on the elected track species.

*Election of Upper/Lower (e.g. Floor/Ceiling) Species*

As understood by the Applicant, the Examiner has requested an election of between an upper/lower (e.g. floor/ceiling) configuration.

Figures 1, 5, 6, 7, 9 and 10 show details of a framing system (e.g. studs, tracks, opposing tracks, and the attachment of studs to tracks to form floors (e.g. Figure 9) and/or ceilings (e.g. Figure 10). The framing system embodiment illustrated in Figures 1, 5, 6, 7, 9 and 10 may incorporate any of the track species identified above.

The forming system embodiment illustrated in Figures 1, 5, 6, 7, 9 and 10 comprises deformable upper tracks and rigid lower tracks. There are no drawings which expressly show deformable lower tracks. However, the first bullet of paragraph [0068] of the description clearly states that deformable tracks may be upper tracks, lower tracks or both upper and lower tracks.

Accordingly, as understood by the Applicant, there are three species of upper/lower (e.g. floor/ceiling) configuration as follows:

- Species 1 – a construction framing system having deformable upper tracks and rigid lower tracks as shown in Figures 1, 5, 6, 7, 9 and 10;
- Species 2 – a construction framing system having deformable lower tracks and rigid upper tracks as described in the first bullet of paragraph [0068]; and
- Species 3 – a construction framing system having deformable lower tracks and deformable upper tracks as described in the first bullet of paragraph [0068].

The Applicant hereby elects the species 3 upper/lower configuration (i.e. upper and lower tracks both deformable) without traverse. Claims 1-7, 12-17, 20, 22-28, 30-32, 34-40 and 47-59 are submitted to read on the elected upper/lower configuration species. The claims that read on both the elected track species and the elected upper/lower configuration species include claims 1-7, 12-14, 16, 22-28, 30 and 47-59.

#### Conclusions Regarding Species Election

The Applicant has elected the species A track and the species 3 upper/lower configuration as identified above. The claims that read on both of these elected species include claims 1-7, 12-14, 16, 22-28, 30 and 47-59.

The Applicant hereby withdraws claims 15, 17, 20, 29, 31, 32 and 34-40, subject to the rejoinder request presented below.

#### Rejoinder Request

Withdrawn claims 15, 17, 20, 29, 31, 32 and 34-40 depend from claim 1. Claim 1 is submitted to patentably distinguish the prior art of record for at least the reasons discussed in the Applicant's previous response. Claim 1 is also submitted to be generic to both the claims corresponding to the elected species and to the withdrawn claims 15, 17, 20, 29, 31, 32 and 34-40. Accordingly, the Applicant hereby requests rejoinder of the withdrawn claims 15, 17, 20, 29, 31, 32 and 34-40.

**Conclusions**

In view of the amendments and comments presented above and in the Applicant's previous response, the Applicant submits that this application is now in condition for allowance and respectfully requests reconsideration and allowance of this application.

Respectfully submitted,  
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